

VOLUME NO. 52

OPINION NO. 8

ELECTED OFFICIALS - Funding of constituent services accounts;
ELECTED OFFICIALS - Expenditure of private funds for constituent services;
POLITICAL PRACTICES, COMMISSIONER OF - Implementation of rules governing constituent accounts;
STATUTORY CONSTRUCTION - Effective date of bill stating that it is effective on “passage and approval”;
ADMINISTRATIVE RULES OF MONTANA - Sections 44.10.539, 44.10.540;
MONTANA CODE ANNOTATED - Sections 1-1-201, 13-37-240, -401, -402;
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att’y Gen. No. 4 (1995).

- HELD:
1. Montana Code Annotated § 13-37-402 prohibits an elected official covered by the statute from paying for constituent services from any account related to the official’s public office other than a constituent services or campaign account. It does not, however, prohibit expenditures for the provision of constituent services from the official’s personal funds.
 2. After May 14, 2007, the limitations placed on constituent spending by Mont. Code Ann. §§ 13-37-401 and -402 were in effect.

December 26, 2008

Mr. Greg Jergeson
Chairman, Public Service Commission
1701 Prospect Avenue
Helena, Montana 59620-2601

Dear Mr. Jergeson:

[P1] You have requested my opinion as to questions that I have rephrased as follows:

1. If an elected Public Service Commissioner accepted and used money donated by private interests to print brochures for his constituents offering energy conservation advice and promoting a scheduled

“brownout” to conserve energy, would acceptance of such monies violate the provisions of Mont. Code Ann. §§ 13-37-401 and -402?

2. What funds may an office holder covered by Mont. Code Ann. § 13-37-402 expend on constituent services?
3. Since the legislation enacting Mont. Code Ann. §§ 13-37-401 and -402 was passed with an immediate effective date, are the statutes applicable to all covered transactions and activities subsequent to the Governor’s signing of the bill?

[P2] Your letter begins by alleging that Public Service Commissioner Brad Molnar spent funds donated by NorthWestern Energy, PPL Montana, and Wal-Mart to print and mail brochures advertising the “Billings Brownout.” This activity occurred in the fall of 2007, after May 14, 2007, the date on which the Governor signed into law House Bill 462, which enacted Mont. Code Ann. §§ 13-37-401 and -402. HB 462 addresses constituent services accounts. Your analysis of the newly enacted constituent services account statutes concluded that “use of monies to provide constituent services that are not surplus campaign funds is prohibited by § 13-37-402, MCA.”

I. Hypothetical “brownout” question

[P3] In your first question, you pose a fact pattern and ask if these facts violate the newly enacted constituent services account law. Because this question assumes disputed facts concerning the actions of Commissioner Brad Molnar, and because this question is currently in front of the Commissioner of Political Practices, it would not be appropriate for me to answer, and I therefore decline to do so. See 45 Op. Att’y Gen. No. 4 (1995) (Attorney General Mazurek refusing to address an issue because it would require him to resolve disputed issues of fact). Nevertheless, in the interest of providing some guidance regarding the funding of constituent services, I will address your remaining questions as follows.

II. What funds may an office holder covered by Mont. Code Ann. § 13-37-402 expend on constituent services?

[P4] For the reasons expressed below, it is my opinion that Mont. Code Ann. § 13-37-402 prohibits an elected official covered by the statute from paying for constituent services from any account related to the official’s public office other than a constituent services or campaign account. It does not, however, prohibit expenditures for the provision of constituent services from the official’s personal funds.

[P5] Montana Code Annotated § 13-37-240(1) requires a person who has been a candidate for political office to dispose of any surplus funds from his or her campaign account “within 120 days after the time of filing the closing campaign report.” HB 462 added language to this statute allowing a “successful candidate” for certain state offices, including the Public Service Commission (hereafter “Elected Official”), to “establish a constituent services account as provided for in 13-37-402.” Id.

[P6] A “constituent services account” is an account established “to pay for constituent services,” which are defined as expenses “incurred to represent and serve constituents” including “travel, mailing and other expenses incurred to represent and serve constituents and authorized in rules adopted by the commissioner [of political practices] to implement [this act].” Mont. Code Ann. § 13-37-401(1). The Commissioner of Political Practices has adopted rules authorizing certain expenditures, such as travel and mailing expenses, and precluding others, such as fundraising expenses. Mont. Admin. R. 44.10.540.

[P7] Montana Code Annotated § 13-37-402 sets the parameters for establishing, funding, and using constituent services accounts. An Elected Official “may deposit **only** surplus campaign funds in a constituent services account.” Mont. Code Ann. § 13-37-402(2) (a) (emphasis added.) Further, any funds in the account “may be used **only** for constituent services.” Mont. Code Ann. § 13-37-402(2)(b) (emphasis added). Expenditures from the constituent services account, however, “may not be made when the holder of the constituent services account also has an open campaign account.” Id. Finally, an Elected Official “may not establish any account related to the public official’s office other than a constituent services account,” although this prohibition does not prevent the establishment of a campaign account. Mont. Code Ann. § 13-37-402(3).

[P8] In interpreting statutory language, I follow the same rules applied by courts. The plain language of a statute controls, and I may neither add what has been omitted nor omit what the legislature has included. Mont. Code Ann. § 1-2-101. Where the language of a statute is plain on its face, resort to extrinsic rules of construction is inappropriate. See, e.g., Marriage of Christian, 1999 MT 189, ¶ 12, 295 Mont. 352, 983 P.2d 966.

[P9] The plain language of Mont. Code Ann. § 13-37-402 places limits on constituent spending by an Elected Official from an “account.” An Elected Official may not use any account “related to the public official’s office” to pay for constituent services, other than a constituent services account or an active campaign account. Mont. Code Ann. § 13-37-402(3). Further, a constituent services account may only be funded with “surplus campaign funds,” which prohibits an Elected Official from soliciting or receiving funds for deposit in a constituent services account. Mont. Code Ann. § 13-37-402(2); Mont.

Admin. R. 44.10.539(1)(b). Nothing in this law, however, precludes use of funds from a personal account for any purpose, including the provision of constituent services.

[P10] Questions may arise as to whether a purportedly personal account has been established as a surrogate for a campaign or constituent services account. In such cases the application of Mont. Code Ann. § 13-37-402 will depend on factual issues, which would include, for example, the Elected Official's intent in establishing or spending from the account. In any actions seeking enforcement of Mont. Code Ann. § 13-37-402, such issues would be resolved by the finder of fact.

III. When did HB 462 become effective and what transactions are covered?

[P11] HB 462 provides that it "is effective on passage and approval." As noted above, the bill was signed into law by the Governor on May 14, 2007. See Compiler's Comments to Mont. Code Ann. §§ 13-37-240, -401, and -402. Based on the plain language of HB 462, it became the effective law of Montana on May 14, 2007. After that date, the limitations placed on constituent spending by Mont. Code Ann. §§ 13-37-401 and -402, as described above, were in effect.

THEREFORE, IT IS MY OPINION:

1. Montana Code Annotated § 13-37-402 prohibits an elected official covered by the statute from paying for constituent services from any account related to the official's public office other than a constituent services or campaign account. It does not, however, prohibit expenditures for the provision of constituent services from the official's personal funds.
2. After May 14, 2007, the limitations placed on constituent spending by Mont. Code Ann. §§ 13-37-401 and -402 were in effect.

Very truly yours,

MIKE McGRATH
Attorney General

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